

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY FISH,

Defendant-Appellant.

UNPUBLISHED
February 21, 2003

No. 237017
Wayne Circuit Court
LC No. 00-012719-01

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of and sentences for involuntary manslaughter, MCL 750.321, two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred in refusing to grant his motion for a mistrial on the basis that the prosecution improperly introduced evidence that an individual had offered \$20,000 for the videotape depicting various camera views of the bar on the evening in question. He claims that evidence of the offer to buy the videotape, “presumably an attempt to obstruct justice,” was highly prejudicial. We disagree.

This Court reviews a trial court’s grant or denial of a mistrial for an abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). A trial court should grant a mistrial only for an irregularity that is prejudicial to the rights of the defendant, and impairs his ability to get a fair trial. *Id.* A mistrial should be granted only when the error complained of is so egregious that there is no other way of removing its prejudicial effect. *People v Gonzales*, 193 Mich App 263, 266; 483 NW2d 458 (1992). Here, although inferentially prejudicial, the statement that someone may have offered money for the videotape does not fall within this category. At trial, defense counsel specifically objected to the introduction of the testimony because it was not relevant since anyone could have offered money for the tape. Defense counsel was correct. Any potential prejudice caused by this ambiguous statement was cured by

¹ Defendant was initially charged with first-degree murder, three counts of assault with intent to murder and felony-firearm.

the trial court's instructions to the jury to disregard the testimony. See *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The trial court did not abuse its discretion in refusing to grant defendant's motion for a mistrial.

Defendant next argues that the trial court erred during sentencing when it scored offense variable ("OV") 13 at 25 points by solely referencing defendant's multiple convictions for his actions in the instant shooting to determine that defendant had evidenced a pattern of criminal activity as defined in MCL 777.43. We disagree. OV 13 is properly scored at twenty-five points where the "offense was part of a pattern of felonious criminal activity involving three or more crimes against a person." The present case involves four convictions for crimes against a person.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray